

REMARKS

The Examiner has objected to claims 11-14 as being in improper form because a multiple dependent for must refer to claims in the alternative. Claim 11 has been amended to refer to claims 1, 7, 9, 22, 23 and 24 in the alternative as suggested by the Examiner. Accordingly, this rejection should be withdrawn.

Claims 1, 7, 9, 11-15 and 19-24 stand rejected under 35 USC 112, first paragraph, for allegedly failing to comply with the written description requirement. Specifically, the Examiner has indicated that the limitation that the nucleotide sequence is “‘at least residues +1 to -368’ or a homolog of, complement of or sequences capable of hybridizing to ‘at least residues +1 to -368’” comprises new matter. The claims have been amended to remove the phrase “at least” before residues. Since Applicants have described the full listing of SEQ ID NO:3, they have necessarily described this claimed portion. Accordingly, this rejection should be withdrawn.

Claims 1, 7, 9, 11-15 and 19-24 stand rejected under 35 USC 112, first paragraph, because the Examiner does not believe that amended claims provide an adequate written description for the claimed genus of promoters. The Examiner also states that this rejection was necessitated by applicant’s last amendment.

The Examiner correctly states that the written description requirement for genus claims may be satisfied through a sufficient description of a representative number of species, by actual reduction to practice, reduction to drawings, or by disclosure of relevant identifying characteristics, i.e. structure or other physical and/or chemical correlation between function and structure, or by a combination of such characteristics sufficient to show that the applicant was in possession of the claimed genus.

To expedite prosecution of this application, the independent claims in this application have been amended to specify that the “in its native form, the promoter directs expression of a gene encoding 1-aminocyclopropane-1-carboxylic acid (ACC) synthase and wherein the promoter is

inducible in response to physical stimulation.” These functional characteristics were removed in the last amendment, and their removal appears to have resulted in the instant rejection. Since the specification provides a sufficient written description of promoters with the claimed combination of structural and physical characteristics, this rejection should be withdrawn.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing Attorney Docket No. 229752001300. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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